IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 90 of 1999.

Judgement reserved on: 26.7.2007.

Date of decision: 11.9.2007.

Prem Chand and others ….. Appellants.

Vs.

The State of H.P. and another …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. Ramakant Sharma, Advocate.

For the Respondents : Mr. M.S.Chandel, Advocate General with Mr. M.L.Chauhan, Additional Advocate General.

Kuldip Singh, Judge.

The plaintiffs are in appeal against the judgement and decree dated 15.3.1999, passed by the learned District Judge, Solan in Civil Suit No. 51-S/1 of 1995/88. The parties are referred in the same manner as in the court below. The suit was originally filed in this Court, but on 24.3.1995, it was transferred to District Judge, Solan.

2. The facts in brief are that plaintiffs are owners in possession of land comprised in khasra Nos. 3/1/1, 3/1/2, 3/1/3, 18/9/2 and 10/3/1, kitas 5, measuring 12 bighas situate in village Kotla, Pargana Kiuntan, Tehsil and District Solan. They are owners

---

Whether the reporters of the local papers may be allowed to see the Judgment?

of other land also in village Kotla. It has been alleged that defendants started construction of Kumarhatti- Oachghat road somewhere in the year 1980-81. The plaintiffs and others filed a suit for injunction against the defendants restraining them from causing any interference on land owned and possessed by the plaintiffs till the land is acquired by the State.

3. The defendants started acquisition proceedings under the Land Acquisition Act, 1894 (for short, the Act) for construction of Kumarhatti- Oachghat road, a portion of land owned by the plaintiffs was also acquired for the road. The Land Acquisition Collector (for short, the Collector) announced the award on 18.8.1982 of the acquired land and for standing trees supplementary award was announced on 12.6.1983.

4. The State assailed the supplementary award by way of reference petition, which was registered as case No. 1-S/4 of 1984 and was dismissed by the learned District Judge, Solan, on 18.7.1986. The payment was not made to the plaintiffs, as per supplementary award, therefore, they filed CWP No. 166/87 in this Court, which was decided on 7.9.1987 with the observation that plaintiffs may avail the alternative remedy available to them for adjudication of the claim in accordance with law. In case the plaintiffs resort to such remedy within a reasonable time, the State shall not defeat the claim of the plaintiffs on narrow plea of limitation, if it is established on merits.

5. The State did not settle the claim of the plaintiffs in terms of order passed in CWP No. 166/87, therefore, the plaintiffs filed CMP

No. 1286/87 in this court. When the matter was taken up by this court, the plaintiffs felt that proper remedy for them was to approach this court by way of review petition. In these circumstances, plaintiffs filed civil Review Petition No. 2 of 1988, which was disposed of by this court on 28.3.1988.

6. The case of the plaintiffs is that on the land other than the acquired land owned by them, there were 360 Nashpati (Pear) trees, 50 Plum and 7 Khumani (Apricot) trees which were seven years old. Out of aforesaid trees, 320 Pear trees were standing on 14 Bighas of land referred above. These trees were damaged and uprooted by Public Works Department by constructing Kumarhatti-Oachghat road. The plaintiffs submitted their claim in CWP No. 166 of 1987. The defendants admitted destruction of 80 Pear trees. They disputed the age of the trees also. In this context, the parties were directed to have recourse to the alternative remedy.

7. The plaintiffs have pleaded that damage to 320 Pear trees of about seven years age which works out to Rs.1,61,040/- has been caused. The defendants have dumped debris on the suit land which has caused damage to the retaining, breast walls in the orchard of the plaintiffs. The plaintiffs alleged that for removal of debris dumped during construction of road, restoration of breast, retaining walls, they shall have to incur Rs.50,000/-. The plaintiffs thus claimed Rs.2,11,040/- (Rs.1,61,040/- + Rs.50000/-) against the defendants. A notice, under Section 80 CPC was served on the defendants and when the defendants failed to pay the amount to the plaintiffs, then the plaintiffs filed suit for recovery of Rs. 2,11,040/-

alongwith interest at the rate of 18% per annum, w.e.f. 25.10.1988 till payment.

8. The suit was contested by the defendants by filing written statement, in which several preliminary objections have been taken, such as, the orchard was established by the plaintiffs in Rabi 1980, Kumarhatti- Oachghat road was constructed in October, 1982 after acquiring the land. The excavated soil was dumped in the acquired width of the road and no debris was thrown on the suit land. There were in all 401 plants beyond the acquired width, which were counted on 5.10.1982 in presence of the plaintiffs after the construction of the road. The plants were again counted on 4.1.1983 and at that time 321 plants were found intact and only 80 plants were damaged and the cost of 80 plants which were of three years age, was Rs.1600/-. The claim of the plaintiffs for Rs.2,11,040/- is exaggerated. Only 80 plants were damaged. The suit has not been properly valued for purposes of court fee and jurisdiction. The suit is time barred. The claim of the plaintiff was denied.

9. On merits, defendants have submitted that the plaintiffs were required to resort to alternative remedy within reasonable time after the judgement dated 7.9.1987 in CWP No. 166 of 1987. The plaintiffs have been paid the entire amount of supplementary award. The defendants in brief denied the claim of the plaintiffs. The plaintiffs filed replication to the written statement, in which they reiterated their stand and denied the case set up by the defendants in their written statement. The suit has been dismissed, as noticed above. The plaintiffs are in appeal.

10. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the plaintiffs has submitted that court below has misconstrued and misinterpreted the material on record and has erred in dismissing the suit. The suit is within limitation. The plaintiffs have proved their case and they are entitled to decree as prayed. The learned Advocate General has supported the impugned judgement and decree.

11. One of the plaintiffs Krishan Kumar has appeared as PW 1. He has stated that the suit land was purchased by him from Smt. Devku in the year 1977 and at that time more than 400 Pear (Gola) variety trees were standing on this land, which were 3-4 years old. The award for the construction of Kumarhatti- Oachghat road was made in the year 1982. The defendants made two awards, one was for land and other for plantation. The defendants did not pay any compensation for the trees, a writ petition was filed in which direction was issued for payment of compensation for the trees. The damage to the trees was caused in the year 1982. The damage was verified by Kanungo after visiting the spot. The age of the plants at the time of damage was seven to eight years. The claim of Rs. 1,61,040/- is for loss to 320 trees. As a result of construction of road by defendants, debris fell on the land and most of the land was damaged. The debris was removed, retaining walls were restored by spending Rs.50,000/-. This damage was got assessed from Dev Raj, Retired Engineer in the year 1988. A notice Ex. PW 1/A was issued, under Section 80 CPC. In cross-examination, he has stated that 5 Bighas of land was acquired by defendants for construction of the

road. Whatever damage was caused at the spot, was recorded by Patwari which was sent by him also. He had kept no accounts for removal of debris.

12. PW 2 Devki Devi, has stated that she sold the land to plaintiffs having 400-500 plants of Pear. PW 3 Dev Raj, Retired Assistant Engineer (Civil), has stated that after visiting the spot of the land, in question, he prepared report Ex. PW 3/B on the basis of 1979 schedule of rates. In cross-examination, he has stated that he measured the land at the instance of Prem Chand Gupta and did not check the revenue record. He went to the spot on 1.10.1988. Only Prem Chand plaintiff had gone to the spot with him. PW 4 Hardev Singh Thakur, has stated that he has seen the land, in question, which was damaged by the construction of road in the year 1982. From the debris, 300 to 322 trees were damaged. In cross-examination, he has stated that there were retaining walls at the place in the year 1988.

13. PW 5 Jeet Singh, Field Kanungo, has stated that original khasra girdawaris of the suit land prior to kharif 1976 have been destroyed and he placed on record a certificate Ex. PW 5/A to this effect. PW 6 Jai Chand Sharma, has proved letter, dated 20.9.1984 Ex. PW 6/A, vide which record of compensation and damage was sent to Executive Engineer, HPPWD.

14. PW 7 Leela Dutt, Field Kanungo, Kandaghat has proved on record Ex. PW 7/A damage form pertaining to the damage caused to the orchard of the plaintiffs, 320 trees of the plaintiffs were damaged by the debris. He has placed on record the copies of

khasra girdawari Ex. PW 7/B to Ex. PW 7/D. In cross-examination, he has stated that he visited the spot on the request of Prem Chand and in order to get the land identified he carried out the demarcation, but did not prepare any demarcation report.

15. PW 8 Perma Nand, Naib Tehsildar has stated that he remained posted as Naib Tehsildar at Solan from 1975 to 1985. He has identified his signatures at point in red circle "C " on Ex. PW 7/A, which he sent to Executive Engineer, B&R, HPPWD. In cross-examination, he has stated that for assessing the damage and verifying the area of ownership, demarcation is necessary and there is no reference of demarcation in Ex. PW 7/A.

16. PW 9 Suraj Parkash, Patwari, has stated that he has not brought the record of khasra girdawari for the period 1982 to 1984, as the same has been destroyed. PW 10 Kailash Nath Ojha, has stated that from the year 1982 to 1986, he remained Horticulture Inspector. He evaluated the trees of Prem Chand etc and sent report to the District Horticulture Officer, Solan. A copy of report prepared by him to this effect is Ex. PW 10/A. The assessment of the damage comes to Rs.40,260/-. In cross-examination, he has stated that on spot, no demarcation was got done. He has admitted that there is no reference of khasra numbers in his report.

17. DW 1 Suraj Parkash, Patwari, has placed on record jamabandis for the year 1975-76 to 1980 Ex. D-1 pertaining to khasra Nos.18/9, 10 min, 3 min, Mouza Kotla, Tehsil Solan. In cross-examination, he has stated that Ex. D1/X has been prepared by Leela Dutt Patwari. DW 2 Ashwani Gupta, Assistant Engineer, B&R, Sub

Division, Oachghat has placed on record muster-roll, Ex. DW 2/A, of Kumarhatti- Oachghat road. The widening work of this road was done from 1.10.1982 to 31.10.1982, another muster-roll is Ex. DW 2/B, and Ex. DW 2/C is the copy of MB, regarding the work on this road. As per Ex. DW 2/C, there were 40 trees of the plaintiffs in non-acquired width, 40 trees were damaged during widening of the road and remaining 21 trees were not affected. The verification of 80 trees was done by earlier Assistant Engineer, vide Ex. DW 2/D, on 14.8.1984. As per MB, the plaintiffs have suffered no damage to retraining wall.

18. The suit of the plaintiff is for recovery of Rs. 2,11,040/-, out of which, claim for damage to 320 Pear trees is of Rs. 1,61,040/- and remaining amount of Rs. 50,000/- has been claimed by the plaintiffs for removal of debris, construction of retaining, breast walls and making the land usable. The plaintiffs' case is that while constructing Kumarhatti- Oachghat road, the defendants have damaged their 320 Pear trees and have also caused damage to their land. The suit was filed on 6.12.1988. It has been submitted on behalf of the plaintiffs that they earlier filed CWP No. 166 of 1987, in which they raised grievance with respect to non-payment of compensation for fruit and non-fruit trees standing on the acquired land of the plaintiffs, which was acquired for construction of Kumarhatti- Oachghat road. The payment with respect to supplementary award was settled but the subsidiary grievance with regard to damage of an incidental or ancillary nature, which were caused to the other property of the plaintiffs, was not adjudicated by

this Court in CWP No. 166 of 1987, rather plaintiffs were relegated to the alternative remedy available to them for adjudication to the said claim. It has also been submitted that this court in the judgement, dated 7.9.1987, has observed that in case plaintiffs would resort to alternative remedy within a reasonable time, the State shall not seek to defeat the claim of the petitioner on narrow plea of limitation, if it is established on merits. It has come on record that the plaintiffs thereafter filed Review Petition No. 2 of 1988, for reviewing the judgement, dated 7.9.1987 passed in CWP No. 166 of 1987, which was allowed on 28.3.1988 regarding payment of interest only. The plaintiffs issued notice Ex. PW 1/A, under Section 80 CPC on 3.4.1988 and filed the suit on 6.12.1988.

19. The defendant has taken the plea of limitation in the written statement and specific issue No.1 regarding limitation was framed by the court. This court, vide judgement, dated 7.9.1987, has observed that in case plaintiffs resorted to alternative remedy within a reasonable time, the State shall not defeat the claim of the plaintiffs on the plea of limitation. The perusal of judgement dated 7.9.1987 would show that CWP No. 166 of 1987 was filed on 25.5.1987. The suit of the nature filed by the plaintiffs ordinarily is to be filed within three years from the date of accruing cause of action. PW 1 Krishan Kumar, plaintiff has stated that the construction of Kumarhatti-Oachghat road was made in May, 1982. The construction was started immediately after the award was announced and it continued till November, 1982, damage to the trees was caused in 1982. In other words, the damage to the trees and the land of the plaintiffs, as

per their own case, was caused in the year 1982. Therefore, plaintiffs could file the suit for recovery of damage latest by the close of year 1985. CWP No. 166 of 1987, was filed by the plaintiffs on 25.5.1987 and by that time the limitation for filing the suit was already over. It is not a case where the writ petition was filed by the plaintiffs within three years from the date of accruing cause of action and after the decision of writ petition the suit was filed. Once the limitation started running it could not be stopped. On 25.7.1987 when CWP No. 166 of 1987 was filed or on 7.9.1987 when CWP No. 166 of 1987 was decided, the claim of the plaintiffs for damage to the trees and the land by way of suit had already become time barred. Therefore, plaintiffs cannot take benefit of the order dated 7.9.1987 passed by this court in CWP No. 166 of 1987. In any case, as per judgement, dated 7.9.1987, the suit was to be filed within reasonable time and the reasonable time in the facts and circumstances of the case can be three or four months including the period of Section 80 CPC notice. The plaintiffs filed the suit on 6.12.1988, i.e. after about 15 months from the date of judgement, dated 7.9.1987, the delay from 7.9.1987 to 6.12.1988 has not been explained. The plaintiffs for this reason also cannot take benefit of judgement dated 7.9.1987 for bringing their claim within limitation. The learned District Judge has rightly appreciated the material on record and returned the finding that the suit of the plaintiffs is time barred.

20. The learned District Judge while considering issues No. 3 and 4 has returned the finding that plaintiffs were able to prove that they were required to spend Rs.50000/- for removal of debris and

raising breast walls on their land. It has also been held that plaintiffs have established that their 80 fruit trees were damaged during the construction of the road. The defendants have not filed any cross objections in the appeal against the finding of learned trial court, therefore, the finding returned by the trial court regarding damage to the fruit trees and the amount required by the plaintiffs for restoration of the land for construction of breast walls and removal of debris, has attained finality.

21. On the basis of the material on record, the plaintiffs have failed to prove any damage over and above the amount what has been decided by the learned District Judge in their favour. The learned District Judge has rightly returned the finding that since the claim of the plaintiffs was time barred, therefore, they are not entitled to any interest. The plaintiffs have failed to make out any case for interference. The learned District Judge has rightly appreciated the material on record and has drawn correct inference from such material. The impugned judgement and decree do not call for any interference.

22. The result of the above discussion the appeal is dismissed with no order as to costs.

September 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**